



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

ARGEO PAUL CELLUCCI
Governor

JANE SWIFT
Lieutenant Governor

BOB DURAND
Secretary

LAUREN A. LISS
Commissioner

Policy 94-03A
Implementation Of Zone I Requirements
(Year 2000 Printing)

Effective Date: 10-8-96
Program Applicability
Supersedes Policy, SOP or Guidance #:
Approved by: Arleen O'Donnell

Policy, SOP or Guideline # 94-03A

Purpose

This revised policy, which applies to existing and new wells (except as noted herein) provides guidance on the implementation of Zone I requirements established under 310 CMR 22.00 requiring public water suppliers ("PWS") to own or control a protective radius of land (Zone I) measuring 100 to 400 feet around PWS wells and specifies what activities may occur within the protective radius.

See Policy 95-04 regarding PWS control of Zone I within publicly owned lands.

Policy

1. **Ownership or Control of Zone I:**

The following, in order of preference, are the options available to a PWS for satisfying the Zone I ownership or control requirement of 310 CMR 22.21

- A. Ownership of Zone I by PWS.
- B. Control of Zone I through:

1. **Easement**

- a. Easement to PWS granting a right of access to and across Zone I in order to operate, monitor, repair and maintain a PWS system within Zone I and perform other activities within Zone I necessary for system's compliance with 310 CMR 22.00;
AND
- b. Easement to PWS granting a right to operate, monitor, repair and maintain a PWS system within Zone I and perform other activities within Zone I necessary for system's compliance with 310 CMR 22.00;
AND

2. **Restriction**

- a. Conservation Restriction established pursuant to M.G.L. c.184, s.32 and approved by DEP running in favor of the PWS (i.e. restricts for the benefit of the PWS) which limits the activities and uses which may be made of the property within Zone I in accordance with 310 CMR 22.21(1)(b)5

OR

- b. Watershed Preservation Restriction created pursuant to M.G.L. c.184, s.32 approved by DEP running in favor of the PWS (i.e. restricts for the benefit of the PWS) which limits the activities and uses which may be made of the property within Zone I in accordance with 310 CMR 22.21(1)(b)5.
- c. Agricultural Preservation Restriction: Where such a restriction has been established pursuant to MGL chapter 184, section 32 and is held by the Department of Food and Agriculture (DFA) and limits the activities and uses which may be made of the property within Zone I to agricultural activities, the PWS, with the assistance of DFA and DEP, must negotiate an agreement with the landowner regarding the use of the property. Agreed upon activities must have no significant adverse impact on water quality in accordance with 310 CMR 22.21(1)(b)5. DFA and DEP must approve this agreement.

DEP recommends PWS obtain subordination agreement(s) from any prior interest holder. See also MGL C. 184 s.26 regarding the requirements from the above restrictions when held by a PWS which is a “governmental body.”

PWS may exert control over Zone I through ownership or through easement and restrictions imposed on Zone I. Control through licenses or zoning is not acceptable.

3. **Public Water Supplies with New Sources or Newly Discovered Sources**

- A. DEP will not approve any proposed PWS well or newly identified PWS well which does not and cannot meet Zone I requirements, and which is located where another approved municipal public water system, water district or private water company can reasonably supply the customers.
- B. For any newly identified PWS well which came on-line prior to January 1, 1994, the PWS must do the following¹: provide to the appropriate DEP Regional water supply program a plan of the well and any treatment plans for the well; meet applicable Certified Operator requirements; conduct an initial test for all applicable Safe Drinking Water Act (SDWA) parameters. If the PWS well does not meet Zone I requirements, the PWS must also comply with DEP required Zone I improvements (e.g., underground storage tank removal, or relocation of any septic system or sewer, etc.) and any monitoring that may be required in addition to that which is normally required. If the well is able to meet the Zone I requirements, the initial testing for the full suite of SDWA parameters will be required as soon as possible after identification of the well as a PWS source, but no

¹ These standard requirements for new sources are described in more detail in 310 CMR 22.00 and Guidelines and Policies for Public Water Systems, 1996. They are noted here to provide clarification for the reader.

additional regular monitoring will be required unless deemed necessary by DEP due to water quality problems or land use concerns.

- C. Any PWS well which has come on-line since January 1, 1994, without receiving DEP approval and which does not meet Zone I requirements must meet the requirements of the source approval process set forth in 310 CMR 22.21.
- D. All PWS's having wells which do not meet Zone I requirements will be informed of such non-compliance at the time a source ID number is assigned as well as at the time of Sanitary Surveys and inspections. PWS's will also be notified in writing that they will not be allowed to expand or modify their system without first obtaining DEP approval, and that such approval may be contingent upon meeting Zone I requirements. Copies of this written notice will be mailed by DEP to the local Board of Health, Planning Board and Building Inspector.

3. **Passive Recreational Use of Zone I:**

310 CMR 22.21(1)(b)5 requires that "current and future land uses within the Zone I are limited to those directly related to the public water system or will have no significant adverse impact on water quality". DEP presumes that certain other activities, as noted below, will have no significant adverse impact on water quality and thus will be allowed in Zone I. All such activities shall be planned and conducted so as to have the least possible impact on water quality. Passive recreation in Zone I defined as walking, hiking, cross-country skiing, bicycling and horseback riding will be allowed by DEP. Low impact trail maintenance will also be allowed. No established picnic areas may be maintained in Zone I nor shall they be established therein due to DEP's desire to avoid concentrated human activity in Zone I. DEP will work with the PWS to ensure that all recreational activities are located as far as possible from the well. The PWS may be required to post signs at the Zone I identifying the area as a Zone I water supply protection area and to meet additional public education requirements.

Other recreational activities may be allowed by DEP upon written request, on a case-by-case basis. In requesting DEP approval for such activities, the water supplier must show that the proposed activity will have no significant adverse impact on water quality.

Public water suppliers must notify DEP in writing of any plans to introduce passive recreational land use to Zone I. DEP reserves the right to reject any such proposals or require modifications on water supplier controlled lands.

4. **New Wells**

In situations where a public water supplier cannot obtain full control of the entire Zone I and there are no alternative sites available for water supply development, the Regional DEP Office may make a site-specific decision to waive the full Zone I requirement (310 CMR 22.21(3)(b)). DEP will make such decisions in extreme circumstances only and may impose additional requirements in such situations. These may include:

- Additional monitoring at the source or at monitoring wells(s) to be installed in a DEP specified location(s);
- Drainage requirements and "no salt" requirements for roads within the Zone I;
- Ineligibility for Phase II/V monitoring waivers for the source;
- Additional treatment of the source, if necessary;
- Requirement(s) for additional protection to be provided elsewhere in the system.
- A requirement that the PWS obtain an amount of upgradient acreage equal in area to that portion of the Zone I which the PWS is unable to own or control; and .

DEP regional water supply programs will bring all such situations to the attention of the other regional programs to ensure regional consistency.

5. **Notification of Lack of Compliance with Zone I Requirements:**

At the time of Comprehensive Compliance Evaluations/Sanitary Surveys, the Division will inform public water suppliers who have wells which do not meet the Zone I requirements of their non-compliance status. Wells located on government-owned land that comply with Policy 95-04 are considered to have met the ownership/control requirement. The following language will be added to CCE/Sanitary Survey reports or Consent Orders, as appropriate:

For Sources Without Full Zone I Ownership or Control:

Please note that you lack ownership or control of the required (xxxxx foot) Zone I protective radius around (name) well. If you plan to modify or expand this source or to replace any wells, you must notify DEP (in accordance with 310 CMR 22.21(3)(b), 310 CMR 22.04(1) and 22.21(10)(a)). At the time of such notification of a proposed modification or expansion, DEP may require you to comply with the Zone I requirement.

For Sources with Inappropriate Land Uses (Excluding Activities Listed in Section 3 of this Policy) Under PWS Control within Zone I:

You are hereby notified that (name) well is in non-conformance with the Department of Environmental Protection (DEP's) requirement that Zone I activities be limited to those directly related to the provision of public water or will have no significant adverse impact on water quality (310 CMR 22.21(1)(a)5.). (Name) source will remain in non-conformance until (specify action to be performed). Pursuant to 310 CMR 22.04(1) and 22.21(a), you must notify the Department of Environmental Protection (DEP) if you plan to modify or expand your source or to replace any wells. At the time of such notification of a proposed modification, expansion, or replacement, DEP may require you to comply with the Zone I requirement that all Zone I activities be limited to those directly related to water supply or will have no significant adverse impact on water quality.

DEP shall consider a one-time increase in water usage of fifteen percent or more to constitute or "expansion" of the source.

6. **Easements:**

In accordance with 310 CMR 22.24, PWS's must seek DEP approval of any change in the ownership or use of land located within the Zone I and of the conveyance of said land or any portion thereof. If the PWS owns or controls land outside of Zone I which land is used for PWS purposes, the same requirements shall apply thereto. DEP will always work with any party in establishing the most appropriate location for a proposed easement running in favor of a PWS. In no case will DEP approve a grant of easement for the purpose of transporting, storing or conveying of liquid petroleum products within a Zone I. DEP may approve other types of easements within a Zone I to be granted by a PWS but will encourage such easements to be restrictive in nature; for example, prohibiting the use of herbicides to control vegetative growth. PWS shall monitor compliance with easement conditions.

7. Sewer Lines:

Policy 94-03A is consistent with DEP Policy 88-02 which prohibits installation of sewer lines within a Zone I unless necessary to eliminate existing or potential sources of contamination to a PWS well. In such situations, sewer lines must be constructed for maximum tightness as described under said policy.

8. Prohibited Activities on PWS –owned Land:

The Division further clarifies interpretation of its regulations regarding the requirement that activities on PWS –owned land must be directly related to public water supply or will have no significant adverse impact on water quality. Specific activities prohibited include but are not limited to:

- Sand and gravel mining;
- Storage of hazardous materials unrelated to the PWS;
- Road salt/deicing materials storage;
- Underground storage tanks;
- Concrete crushing operations; and
- Parking areas and vehicle maintenance unrelated to public water supply

APPROVED: October 8, 1996

EFFECTIVE: October 8, 1996

Arleen O' Donnell, Assistant Commissioner
Bureau of Resource Protection